IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2185 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT
Versus
PARVESHKUMAR @ PESHI AJIT KUMAR RAJPUT & 2

==========

Appearance :
MR IM PANDYA APP for Appellant
MR CHETAN K PANDYA for Respondents No.1-3

==========

CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE
BANKIM.N.MEHTA

Date : 16/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

[1] This criminal appeal is preferred by the State under Section 378 of the Criminal Procedure Code against the judgment and order delivered by the Special Judge and Additional Sessions Judge, Fast Track Court, Banaskantha at Deesa on 7th August, 2004 in Sessions Case No.24/2003 whereby all the three accused, respondents herein came to be acquitted by the trial Court for the offences punishable under Sections 302, 201 and 114 of the Indian Penal Code.

[2] As per the prosecution case, the incident took place on 1st July, 2002 before 8.00 p.m. at any time. The allegations which were levelled against the present respondents in respect of murder committed by them of one Ajayabsing @ Jebsing Santoksing. According to the prosecution

case, Truck No.RJ-31-G-3468 and Truck No.RJ-13-G-5435 both were owned by one Gurucharansing. He along with both trucks had been towards the Gujarat around 1st July, 2002. Truck No.RJ-31-G-3468 was driven by accused No.1 – Parveshkumar @ Peshi Ajitkumar Rajput and owner – Gurucharansing had accompanied in the said truck. In the said Truck No. RJ-31-G-3468, the deceased Ajayabsing @ Jebsing Santoksing was a cleaner, while in second truck bearing Truck No.RJ-13-G-5435, accused No.2 – Amarjitsing @ Kala @ Bhau Suvarnasing Jaat was driver and accused No.3 – Sukhdevsing Satnamsing Prajapati was the cleaner. Both the trucks were loaded at Bikaner and were unloaded at Kadi Town, because the goods belonged to one SPL Limited, on 27th July, 2006 and 28th July, 2006. The trucks, thereafter, were driven to Bhavnagar and were again loaded for the goods to be delivered at Punjab through Rajasthan from Alang Ship Breaking Yard and iron scrap was loaded as goods in both the trucks. The trucks had passed through Sachot Check Post and when both trucks came near Tharad, the present

respondents i.e. accused and Gurucharansing played gambling and in the said gambling, deceased Jebsing won Rs.5,000/- and that was the cause of dispute between them. According to the allegations, on account of this dispute on 1st July, 2002 at any time, Gurucharansing caused injuries on the head of Jebsing, who was sitting in Truck No.GJ-31-G-3468 at cleaner side and he was thrown out of the said truck. Thereafter, the trucks were driven away. The above facts came to the light, when deadbody was found by one Jovarji on road, who was Sarpanch of village Vadadara at about 8.00 a.m. on 1st July, 2002. Jovarji conveyed this fact to Bhavraji Raymalji Chauhan, P.W.2, who was at relevant time Sarpanch of village Mesara Gram Panchayat and place where deadbody of Ajayabsing @ Jebsing Santoksing was found, was situated within the precincts of village Mesara. On receiving this information, Bhavraji Raymalji Chauhan informed Tharad Police Station and Tharad Police came to the place where deadbody of Jebsingh was lying. P.W.13 – Jayprakash Rambhai Patel, the then serving as

Sub-Inspector at Tharad Police Station, on receiving the information, went to village Mesara near Highway No.15 on western side, where the deadbody was lying and it was assumption of the police that some accident had taken place by vehicle and the deceased was died on the side of the road on account of this accident. The police noted the complaint of Bhavraji Raymalji Chauhan, P.W.2 as C.R. No.I-71/2002 for the offences punishable under Sections 279, 304(A) of the Indian Penal Code as well as under Sections 177, 184, 134 of the Motor Vehicles Act. An investigation, thereafter, was carried out by three Investigating Officers. First investigation was carried out by P.W.13 – Jayprakash Rambhai Patel, the then P.S.I. of Tharad Police Station, second investigation was carried out by P.W.16 – Narendrapuri Hardevpuri Goswami, the then Senior P.S.I. of Tharad Police Station and third investigation was carried out by P.W.17 – Mukul Prahaladrai Buch, the then Police Inspector of Tharad Police Station. Noteworthy it is here that third Investigating Officer P.W.17 – Mukul

Prahaladrai Buch was entrusted this investigation by District Superintendent of Police, Banaskantha around November, 2002. During investigation, vide Ex.84, Investigating Officer P.W.17 – Mukul Prahaladrai Buch requested the Court to delete the offences punishable under Sections 279, 304(A) of the Indian Penal Code and all the charges under the Motor Vehicles Act and to add the offences punishable under Section 302 and 201 of the Indian Penal Code. The said Yadi is on record at Ex.84 and accordingly, for the circumstances mentioned in the Yadi mainly on a statement given by the father of the deceased P.W.10 – Santoksing Atmasing, the investigation, therefore, was carried out for the offences punishable under Sections 302 and 201 of the Indian Penal Code. After investigation, a charge-sheet also came to be filed against the present respondents for the said offences punishable under Sections 302 and 201 and 114 of the Indian Penal Code. It is also noteworthy here that before filing of this charge-sheet, Gurucharansing, who was alleged driver of Truck

No.GJ-31-G-3468, allegedly caused injuries to the deceased had died and, therefore, the charge-sheet came to be filed against the present respondents. The case was committed to the Court of Sessions and learned Additional Sessions Judge, Banaskantha vide Ex.16 framed charges against all the three accused on 1st March, 2004 and each of the accused pleaded not guilty.

[3] The prosecution, therefore, examined as many as 17 witnesses to prove its case and produced on record the voluminous documentary evidence. After evidence was over, the learned trial Judge recorded the statements of each of the accused under Section 313 of the Code of Criminal Procedure and each of the accused denied the prosecution evidence and their defence was of total denial.

[4] After hearing learned APP as well as the defence, the learned trial Judge came to the conclusion that the case of the prosecution

rested on circumstantial evidence and none of the circumstances could be proved beyond doubt against any of the accused, so as to form a chain linking the accused to the guilt. Therefore, the learned trial Judge acquitted the accused and gave benefit of doubt.

[5] Learned APP Mr.I.M.Pandya for the appellant – State and learned advocate Mr.Chetan Pandya for the respondents were heard in extreme details at this stage.

[6] Both the learned counsels have argued in details and have provided the copies of the relevant documents and evidence of the witnesses and have assisted this Court to great extent. We have called for Record & Proceedings from the trial Court which is available with us. Learned counsels have requested to hear this matter finally at this stage as Record & Proceedings as well as other papers are available and this Court is addressed by learned counsels in greater

details. Hence, this appeal is admitted. Leave to appeal is granted. Learned advocate Mr.Chetan Pandya waives service for respondents. Learned counsels were heard finally in respect of this appeal.

[7] Needless it is to observe that in appeals against the acquittal, the High Court has same powers to appreciate the evidence independently and come to its own findings. Care should be taken, therefore, to scrutinize and appreciate the evidence independently. However, if it is found that the reasons assigned by the trial Court are against the weight of the evidence, recorded during the trial and by appreciation of the evidence carried out by the trial Court resulted in clear miscarriage of justice, no interference should be made in the orders of acquittal lightly. We have, therefore, gone entirely through the record and the evidence of each of the witnesses and each documents produced on record is scrutinized by us. We have

undertaken our independent scrutiny and appreciation of the evidence recorded during the trial. We have examined all vital features of the case and all reasonable probability arising out of the circumstances of the case.

[8] Learned APP Mr.I.M.Pandya for the appellant – State vehemently urged that though the case rests on circumstantial evidence, but having regard to a medical expert opinion and when the deceased was cleaner, the judgment impugned in this appeal, is required to be interfered with. He was heard in detail and learned APP opposed the judgment and order impugned in this appeal.

[9] On the other hand, learned advocate Mr.Chetan Pandya for the respondents – accused submitted that though 17 witnesses have been examined and voluminous documents are produced on record, but there is no iota of evidence to connect any of the accused with the alleged

crime. He was also heard in detail.

[10] Coming to the appreciation of the evidence as recorded by the trial Court, P.W.1 – Ashwinkumar Himmatgiri Goswami is examined at Ex.22. According to him, he was working as a Manager at factory of SPL Limited, situated at Kadi Town. From the record on inquiry by the police, he had stated that Truck No.RJ-13-G-5435 had been to Kadi from Bikaner on 27th June, 2002 at 7.55 a.m., while Truck No.RJ-31-G-3468 had reached Kadi and on 28th June, 2002 at 7.40 a.m. both the trucks were coming from Bikaner, they were checked at security gate of the factory and necessary entries were made in the register. He produced this register and necessary entries on record, vide Exs.24, 25, 26, 27 and 28. These are the vouchers and entries made in the register of the Company. According to the say of this witness, the documents, he produced, of Truck No.RJ-31-G-5435, accused No.2 – Amarjitsing @ Kala @ Bhau Suvarnasing was the driver and

accused No.3 – Sukhdevsing Satnamsing Prajapati was the cleaner, while Truck No.RJ-13-G-3468, one Gurucharansing was the driver.

In his cross-examination, he stated that the person who ordinarily got down from the truck and offered his name as such was noted by them as driver of the truck and whatever had been deposed by him, was from the record of the company which was produced during trial. He had no personal dealing with the driver or cleaner.

This witness is not implicating the accused in the crime as nothing is coming out from his deposition that deceased Ajayabsing @ Jebsing Santoksing was cleaner in the said truck, when the truck reached at Kadi.

[11] P.W.2 – Bhavarji Raymalji is examined Ex.30 and he was Sarpanch of Mesara Gram Panchayat at the relevant time and according to him near highway of village Mesara, a deadbody of Ajayabsing @ Jebsing Santoksing was found and he had informed police. Except that he stated

nothing to link the accused with crime.

[12] P.W.3 – Aalamkhan Bhemji is examined at Ex.32. He is a panch witness of panchnama at Ex.33. Ex.33 Panchnama is in respect of place where the deadbody of Ajayabsing @ Jebsing Santoksing was found. This panch did not support the prosecution case in respect of panchnama at Ex.33, which also pertains to both the trucks. He is also panch of panchnama at Ex.34 drawn by police on 26th November, 2002 at 15.15 hours. This is in respect of leading of the panchas and police to the place of offence by the accused. A preliminary panchnama alleged to have been drawn wherein accused alleged to have stated before the police that Ajayabsing @ Jebsing Santoksing was done to death and he was cleaner in Truck No.RJ-13-G-3468 and for reconstruction of crime scene, they were prepared to take police and panch to the place of offence and, thereafter, remaining panchnama, accused alleged to have been taken by police and panchas to the place of offence.

However, panchnama at Ex.34 is not supported by this witness – Aalamkhan, who has been declared as hostile and confronted with panchnama at Ex.34.

In cross-examination of the defence, this witness stated that it is not true that there were many other persons present at that time and he and the other panch were made to sit in the police car and, thereafter, they were taken back to Tharad and, there their signatures were obtained. Thus, this witness has not at all supported the prosecution case.

[13] P.W.4 – Bhanubhai Lukabhai Dabhi is examined at Ex.35. He was PSO at Tharad Police Station on 1st July, 2002 and he registered the offence from a complaint given by P.W.-1 as recorded by the then P.S.I. Mr.Patel. The complaint is produced at Ex.36, except that this witness has stated nothing to link the accused with the alleged crime..

[14] P.W.5 – Vinodkumar Pravinbhai is examined at Ex.40. Though before the police his version, was that his hotel i.e. Tea Cabin was situated on Sachor Road and on the day of the incident, some sardarji drivers in the earlier part of the day stopped to take tea at his hotel and they were quarreling themselves, one person was sitting in the truck and one sardarji driver was abusing him. Even before the police, his version was that he could not recognize the person as a driver or cleaner. However, this witness has not supported this version also and has been declared as hostile. Thus, this witness is not helpful to the prosecution in any manner.

[15] P.W.6 – Javarsing Agarsing is examined at Ex.41 because he was Sarpanch of Vadasar Gram Panchayat at relevant time and he found deadbody lying in the precincts of village Mesara and informed the Sarpanch of Mesara i.e. P.W.1 – Bhavarji. The witness is not useful to the prosecution, except how deadbody was found out.

[16] P.W.7 – Dr.Arjunbhai Ajubhai Chaudhary is examined at Ex.42, who conducted the postmortem of deadbody of Ajayabsing @ Jebsing Santoksing as forwarded by Tharad Police Station on 1st July, 2002 at about 2.15 p.m. He deposed that at about 3.35 p.m. on the same day, he started postmortem examination and completed it at 5.15 p.m. He found external injuries on the deadbody antemortem as described in column No.17 of postmortem note, which is placed on record at Ex.43. The injury on head was serious i.e. CLW on scapular region. There were in all other eight injuries of abrasion etc. on the body of the deceased. According to the witness, the death was caused due to shock on account of grievous hurt on head. This cause, thereafter, according to the witness, became final.

[17] P.W.8 – Jagjitsing Ajmersing is examined at Ex.54. He was Vice-President of Truck Association in 2002 at Rampura. About thousands

of trucks were recorded in their association. The Truck No.RJ-31-G-3468 was registered before them and owner of the said truck was the wife of Gurucharansing, but the witness stated that who was the driver, he could not say. This witness stated that Santoksing, the father of deceased - Ajayabsing @ Jebsing Santoksing had been to him and he stated that his son - Ajayabsing @ Jebsing Santoksing before one month had been to out of Punjab as a cleaner in the truck and along with Santoksing, the witness had visited Tharad Police Station. He identified accused No.1 to be the driver of his village. He deposed that accused No.1 was with Gurucharansing. He deposed that he did not know anything about Jebsing nor he inquired anything from accused No.1 nor he knew about the death of Jebsing. He was declared hostile and was confronted with the police statement, but he did not support the prosecution case.

In examination-in-cross of the defence, he stated that who was the driver and cleaner of the truck belonged to Gurucharansingh, he could

not say. Thus, this witness had no personal knowledge nor he deposed any circumstances to link the accused with the crime. The witness, therefore, is not useful to the prosecution case.

[18] P.W.9 – Sukhdevsing Avatarsing is examined at Ex.63. He stated that he knew Ajayabsing @ Jebsing and father of Ajayabsing @ Jebsing , who informed him that his son Ajayabsing @ Jebsing had been out of the town as a cleaner in the truck and had been to Gujarat. He further informed the witness that Ajayabsing @ Jebsing had not returned and on insistence of Santoksing, the father of Ajayabsing @ Jebsing, the witness accompanied him to Gujarat upto Tharad Police Station. The witness stated that he did not know anything about the circumstances in which Ajayabsing @ Jebsing was cleaner in the truck nor the circumstances in which how Ajayabsing @ Jebsing was done to death. He was cross-examined by the prosecution, but he did not support the prosecution case, though his original

version before the police appears to be not involving any of the accused in the crime. Therefore, this witness is also not helpful to the prosecution to connect the accused with the crime.

[19] P.W.10 – Santoksing Aatmasing is examined at Ex.68 and he is father of deceased - Ajayabsing @ Jebsing. According to him, he knew Gurucharansing, his son Ajayabsing @ Jebsing had gone in a truck as cleaner on 28th June, 2002. He stated that he could not say in which truck deceased went out as a cleaner nor he could say that who was the driver of the said truck. But after 15 days, when Ajayabsing @ Jebsing did not return, he gave one complaint before Rampura Police Station about Ajayabsing @ Jebsing that his whereabouts were not known and deceased was missing. Thereafter, he came to Tharad Police Station and came to know that Ajayabsing @ Jebsing had met with the death and his funeral was arranged by him. He did not know how

Ajayabsing @ Jebsing had died, nor Tharad Police Station conveyed to him that how Ajayabsing @ Jebsing had died. He had forwarded one application to the Chief Minister of the State of Gujarat. This witness is also declared as hostile by the prosecution. He denied the fact that he stated before the police that on account of dispute arose in gambling, Ajayabsing @ Jebsing was done to death by the accused and Gurucharansing. Though this witness, even according to the prosecution case, had no personal knowledge of the incident, but it appears from his application preferred to the Hon'ble Chief Minister, investigation was entrusted to 3rd Investigating Officer. Though this witness is father of the deceased, but since he had no personal knowledge nor he could depose anything incriminating any of the accused and hence, this witness is also not useful to the prosecution case. The application which he addressed to the Hon'ble Chief Minister is placed on record at Ex.65.

[20] P.W.11 – Pavankumar Mohanlal Agrawal is examined at Ex.66 by the prosecution. He stated that he knew Ajayabsing @ Jebsing son of Santoksing. He was working as cleaner of the truck. He stated that Ajayabsing @ Jebsing had died, but how he died he did not know. He had been to Tharad Police Station to inquire where he saw the photographs of the deadbody and cloths of the deceased Ajayabsing @ Jebsing and he did not know any of the accused. This witness is also declared as hostile and he denied the fact that in his statement before the Tharad Police Station, he stated that near Tharad from the truck Ajayabsing @ Jebsing jumped out and the said truck owner driving the said truck. This witness is also not useful to the prosecution.

[21] P.W.12 – Vichhattarsing Atmasing is examined at Ex.67. He is also witness, who knew Ajayabsing @ Jebsing and had been to Tharad Police Station, but did not know anything about the circumstances of the death of the deceased.

[22] P.W.13 – Jayprakash Rambhai Patel is examined at Ex.68, who is the first Investigating Officer and according to him, he had informed by Sarpanch, P.W.2 – Bhavarji Raymalji about deadbody and he visited National Highway No.15 and found the deadbody on the eastern side of the road at 4.00 a.m. According to the complainant – Bhavarji, P.W.2. This witness recorded the complaint and after registering the offences he was incharge of the investigation. He drew inquest panchnama and had forwarded the deadbody for postmortem. He had taken photographs of deadbody etc. He recorded the statements of many witnesses and collected many documents. According to this witness, thereafter, on his transfer he entrusted investigation to the next Investigating Officer P.S.I. Goswami. From the deposition of this witness as well as of the documents produced by him at Ex.69 to 77, nothing is coming out to link these accused with the crime.

[23] P.W.14 – Ashwinkumar Sohanlal Sharma, Ex.79 is examined by the prosecution. He stated that at the relevant time, he was serving in RRC Roadway at Bhavnagar in capacity of Manager. One Dharmasinh Jaat was the owner of the said Roadway. The witness as well as owner Dharmasinh Jaat both belonged to State of Punjab and were doing business at Bhavnagar as Commission Agent of loading of the trucks of the out States. On 29th June, 2002, he was at his office, one Truck No.RJ-31-G-3468 was loaded through their office by iron scrap from Alang. One person posing himself to be a driver of the said truck, had been to his office for taking bilty. He stated that he did not know any of the accused or Gurucharansing.

He has been cross-examined by the defence. So this witness is deposing this incident of loading the truck only and nothing is deposed by him to incriminate any of the accused in crime.

[24] P.W.15 – Rajendrakumar Dharmendrakumar Malhotra is examined at Ex.80. He deposed that at the relevant time, he was staying at Bhavnagar and was doing the transport business. On 29th June, 2002, he had loaded 10 to 15 trucks on commission. On that day, a truck driven by Amarjitsing @ Kala @ Bhau Suvarnasing Jaat [accused No.2] was also got loaded through him. He stated that whether any cleaner was accompanied accused No.2 or not, he could not say. He stated that they were used to keep register for this business and in their register, this transaction was also noted.

He has been cross-examined by the defence in which he stated that he did not know each and every drivers or cleaners, who were coming to their office for their business. Thus, this witness is also deposing to this extent and not involving any of the accused in crime.

[25] P.W.16 – Narendrapuri Hardevpuri Goswami is examined at Ex.81 by the prosecution. He

stated that he took over the investigation on 2nd September, 2002. The deceased was of Rampura of Punjab State and the witness had been to Punjab in investigation and had recorded the statements and had arrested the accused – Parveshkumar accused No.1 on 24th October, 2002. Thereafter, on instruction of District Superintendent of Police, he was relieved from the investigation.

[26] Last witness is examined at Ex.83, P.W.17 – Mukul Prahaladrai Buch. He stated that he was entrusted with the investigation on 1st November, 2002 by District Superintendent of Police and from the investigation and more particularly from the statement of the father of the deceased and for other circumstances mentioned in Ex.84 Yadi, he felt that the offence was committed as punishable under Sections 302 and 201 and not under Sections 279 and 304(A) of the Indian Penal Code and under the provision of Motor Vehicles Act. Therefore, he started conducting investigation for the offences punishable under

Sections 302 and 201 of the Indian Penal Code. The accused, who was on bail were re-arrested. He recorded the statement of Ashwinkumar Sharma and Malhotra and other 15 witnesses at Alang Ship Breaking Yard. He, thereafter, forwarded both the trucks to FSL, vide Yadi at Ex.86 for the analysis and the result of FSL were produced by him at Exs.90, 91, 92, 93 and 94. The opinion of the Serological Department of the FSL wsa produced by him. The map of the seen of offence was also produced at Ex.95. After investigation, according to this witness, he submitted the charge-sheet against the three accused, respondents herein. From this witness also, nothing is coming out to connect the accused with the crime.

[27] The case undoubtedly rests on the circumstantial evidence as no direct evidence was available to the Investigating Agency. Even after examining 17 witnesses, evidence of whom, we have carefully scrutinized, nothing is found linking

the accused with the crime. We have scrutinized each document produced on record. From none of the documents produced, none of the accused could be linked with the crime. The basic requirement of the fact which remains to be proved by the prosecution beyond doubt, is not proved by the prosecution in this case. Basic facts as per the prosecution story, it must be proved beyond doubt by the prosecution that the deceased Ajayabsing was travelling in the said truck along with the Gurucharansing and accused No.1 in Truck No.RJ-31-G-3168. Out of 17 witnesses, none of the witnesses has directly stated nor none of the witness deposed so as to deduce a reasonable presumption from the deposition that deceased was travelling in the said truck on the faithful night of 1st July, 2002. What is proved at the most is, truck had been to Kadi from they unloaded goods and again went to Bhavnagar and from Alang Ship Breaking Yard, Bhavnagar they again loaded the goods from Punjab and undertook travelling to Punjab via Rajasthan. While we scrutinized above said witnesses as aforesaid,

even witnesses could not say with certainty that who was the driver of each of the truck. Even mere reference is not deposed by any of the witness that the deceased Ajayabsing @ Jebsing was travelling along with Gurucharansing and accused No.1 in the said truck. Not only that but nothing is coming out to even remotely denote that the deceased Ajayabsing @ Jebsing was seen before 1st July, 2002 in the company of any of the accused or Gurucharansing. A crime was registered initially for the offences punishable under Sections 279, 304(A) of the Indian Penal Code as well as of the petty offence under the Motor Vehicles Act. However, as it appears that the father of the deceased filed an application before the Hon'ble Chief Minister of the State of Gujarat, the investigation was entrusted to third Investigating Officer, P.W.-17. The statement made by the Santoksing, the father of the deceased Ajayabsing @ Jebsing, to the police about the dispute arising of gambling and the incident was result of that, was not based on personal knowledge of the witness Santoksing,

the father of the deceased Ajayabsing @ Jebsing. While deposing before the Court, the witness Santoksing did not support even his this version before the police. The case may be proved by the prosecution beyond reasonable doubt, either by the direct evidence or even by circumstantial evidence. The guilt of the accused may be proved by circumstantial evidence also, but in those circumstances, the law requires that the prosecution has to prove the guilt of the accused on all the circumstances against the accused denoting the guilt must be proved beyond doubt so as to form a chain indicating that crime must have been committed by the accused and accused only. Long back in the matter of **Sharad Birdhichand Sarda Vs. State of Maharashtra**, reported in **AIR 1984 S.C. 1622,** the Apex Court established the guidelines for appreciating the circumstances in a criminal trial, when direct evidence is not available. In respect of circumstantial evidence, the Apex Court observed in paragraphs No.152, 153 and 156 as under:

*"**152.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :*

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made :

"certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2)the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say,

they should not be explainable on any other hypothesis except that the accused is guilty.
(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and
(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

153. *These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.*

156. *This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry's case (supra) was approved by this Court in Anant Chintaman Lagu v. State of Bombay, (1960) 2 SCR 460 : (AIR 1960 SC 500). Lagu's case as also the principles enunciated by*

this Court in Hanumant's case (supra) have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases -Tufail's case (1969 (3) SCC 198) (supra). Ramgopal's case (AIR 1972 SC 656) (supra). Chandrakant Nyalchand Seth v. State of Bombay (Criminal Appeal No. 120 of 1957 decided on 19-2-1958), Charambir Singh v. State of Punjab (Criminal Appeal No. 98 of 1958 decided on 4-11-1958). There are a number of other cases where although Hanumant's case has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration, (1974) 2 SCR 694(696): (AIR 1974 SC 691 at p. 693), Mohan Lal Pangasa v. State of U. P., AIR 1974 SC 1144 (1146), Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCR 384 (390) : (AIR 1981 SC 765 at p. 767) and M. G. Agarwal v. State of Maharashtra, (1963) 2 SCR 405 (419) : (AIR 1963 SC 200 at p. 206) a five-Judge Bench decision."

[28] After considering the evidence on record and the contentions raised by both the learned counsels and going carefully through the Record &

Proceedings including the voluminous documents produced on record, it clearly appears that there is not a single circumstance proved beyond doubt indicating the guilt of the accused in the crime alleged. Even this is a case wherein it cannot be finally concluded whether the death is homicidal or accidental. Though Dr.Arjunbhai Ajubhai Chaudhary, P.W.7 expressed his opinion that the death was caused due to head injuries, but at the same time, it could not be established beyond doubt by the prosecution, whether these injuries were accidental or homicidal. There is no iota of evidence against any of the accused, even in the form of circumstances so as to interfere in the judgment and order impugned in this appeal.

[29] In view of the above, this appeal stands dismissed.

[J. R. VORA,J.]

[BANKIM.N.MEHTA,J.]

(vijay)